



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

ANN ARBOR, MI 48105

May 7, 2003

OFFICE OF  
AIR AND RADIATION

MEMORANDUM

SUBJECT: Full Text of 40 CFR Part 1068 Including Proposed Changes

FROM: Alan Stout, Mechanical Engineer  
Assessment and Modeling Division

TO: Docket A-2001-28

EPA has proposed changes to the General Compliance Provisions for Nonroad Programs in 40 CFR part 1068. The proposed changes are published in the Federal Register without showing the full text of part 1068. The attached file includes the full text of part 1068 as it would be modified by the proposal. This file is not intended to replace the Federal Register for purposes of public comment, but merely to assist readers in understanding the full scope of the requirements of part 1068.

Attachment

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Authority: 42 U.S.C. 7401 - 7671(q).

## **Subpart A—Applicability and Miscellaneous Provisions**

### **§1068.1 Does this part apply to me?**

- (a) The provisions of this part apply to everyone with respect to the following engines and to equipment using the following engines (including owners, operators, parts manufacturers, and persons performing maintenance).
  - (1) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.
  - (2) Recreational SI engines and vehicles that we regulate under 40 CFR part 1051 (such as snowmobiles and off-highway motorcycles).
  - (3) Land-based nonroad diesel engines that we regulate under 40 CFR part 1039.
- (b) This part does not apply to any of the following engine or vehicle categories:
  - (1) Light-duty motor vehicles (see 40 CFR part 86).
  - (2) Heavy-duty motor vehicles and motor vehicle engines (see 40 CFR part 86).
  - (3) Aircraft engines (see 40 CFR part 87).
  - (4) Locomotive engines (see 40 CFR part 92).
  - (5) [Reserved]
  - (6) Marine diesel engines (see 40 CFR parts 89 and 94)
  - (7) Marine outboard and personal watercraft engines (see 40 CFR part 91).
  - (8) Small nonroad spark-ignition engines (see 40 CFR part 90).
- (c) For equipment subject to this part and regulated under equipment-based standards, interpret the term “engine” in this part to include equipment (see §1068.30).
- (d) Paragraph (a)(1) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines and vehicles. This part 1068 refers to each these other parts generically as the “standard-setting part.” For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Follow the provisions of the standard-setting part if they are different than any of the provisions in this part.
- (e)
  - (1) The provisions of §§1068.30, 1068.310, and 1068.320 apply for stationary spark-ignition engines beginning January 1, 2004, and for stationary compression-ignition engines beginning January 1, 2006.
  - (2) The provisions of §§1068.30 and 1068.235 apply for the types of engines listed in paragraph (a) of this section beginning January 1, 2004, where they are used solely for competition.

### **§1068.5 How must manufacturers apply good engineering judgment?**

- (a) You must use good engineering judgment for decisions related to any requirements under this chapter. This includes your applications for certification, any testing you do to show that your production-line or in-use engines comply with requirements that apply to them, and how you select, categorize, determine, and apply these requirements.
- (b) If we send you a written request, you must give us a written description of the engineering judgment in question. Respond within 15 working days of receiving our request unless we allow more time.
- (c) We may reject your decision if it is not based on good engineering judgment or is otherwise inconsistent with the requirements that apply, based on the following provisions:
  - (1) We may suspend, revoke, or void a certificate of conformity if we determine you deliberately used incorrect information or overlooked important information, that you did not decide in good faith, or that your decision was not rational.

- (2) If we believe a different decision would better reflect good engineering judgment, but none of the provisions of paragraph (c)(1) of this section apply, we will tell you of our concern (and its basis). You will have 30 days to respond to our concerns, or more time if we agree that you need it to generate more information. After considering your information, we will give you a final ruling. If we conclude that you did not use good engineering judgment, we may reject your decision and apply the new ruling to similar situations as soon as possible.
- (d) We will tell you in writing of the conclusions we reach under paragraph (c) of this section and explain our reasons for them.
- (e) If you disagree with our conclusions, you may file a request for a hearing with the Designated Officer as described in subpart F of this part. In your request, specify your objections, include data or supporting analysis, and get your authorized representative's signature. If we agree that your request raises a substantial factual issue, we will hold the hearing according to subpart F of this part.

#### **§1068.10 How do I request EPA to keep my information confidential**

- (a) Clearly identify any information you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2. This procedure applies equally to the Environmental Appeals Board.
- (b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.
- (c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in §2.204 of this chapter.

#### **§1068.15 Who is authorized to represent the Agency?**

- (a) The Administrator of the Environmental Protection Agency or any official to whom the Administrator has delegated specific authority may represent the Agency. For more information, ask for a copy of the relevant sections of the EPA Delegation Manual from the Designated Officer.
- (b) The regulations in this part and in the standard-setting part have specific requirements describing how to get EPA approval before you take specific actions. These regulations also allow us to waive some specific requirements. For provisions or flexibilities that we address frequently, we may choose to provide detailed guidance in supplemental compliance instructions for manufacturers. Such instructions will generally state how they relate to the need for pre-approval. Unless we explicitly state so, you should not consider full compliance with the instructions to be equivalent to EPA approval.

#### **§1068.20 May EPA enter my facilities for inspections?**

- (a) We may inspect your engines, testing, manufacturing processes, engine storage facilities (including port facilities for imported engines or other relevant facilities), or records, as authorized by the Act, to enforce the provisions of this chapter. Inspectors will have authorizing credentials and will limit inspections to reasonable times—usually, normal operating hours.
- (b) If we come to inspect, we may or may not have a warrant or court order.
- (1) If we do not have a warrant or court order, you may deny us entry.
- (2) If we have a warrant or court order, you must allow us to enter the facility and carry out the activities it describes.
- (c) We may seek a warrant or court order authorizing an inspection described in this section, whether or not we first

tried to get your permission to inspect.

(d) We may select any facility to do any of the following:

- (1) Inspect and monitor any aspect of engine manufacturing, assembly, storage, or other procedures, and any facilities where you do them.
- (2) Inspect and monitor any aspect of engine test procedures or test-related activities, including test engine selection, preparation, service accumulation, emission duty cycles, and maintenance and verification of your test equipment's calibration.
- (3) Inspect and copy records or documents related to assembling, storing, selecting, and testing an engine.
- (4) Inspect and photograph any part or aspect of engines and components you use for assembly.

(e) You must give us reasonable help without charge during an inspection authorized by the Act. For example, you may need to help us arrange an inspection with the facility's managers, including clerical support, copying, and translation. You may also need to show us how the facility operates and answer other questions. If we ask in writing to see a particular employee at the inspection, you must ensure that he or she is present (legal counsel may accompany the employee).

(f) If you have facilities in other countries, we expect you to locate them in places where local law does not keep us from inspecting as described in this section. We will not try to inspect if we learn that local law prohibits it, but we may suspend your certificate if we are not allowed to inspect.

#### **§1068.25 What information must I give to EPA?**

If you are subject to the requirements of this part, we may require you to give us information to evaluate your compliance with any regulations that apply, as authorized by the Act. This includes the following things:

- (a) You must provide the information we require in this chapter.
- (b) You must establish and maintain records, perform tests, make reports and provide additional information that we may reasonably require under section 208 of the Act. This also applies to engines we exempt from emission standards.

#### **§1068.27 May EPA conduct testing with my production engines?**

If we request it, you must make a reasonable number of production-line engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this chapter.

#### **§1068.30 What definitions apply to this part?**

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Aircraft means any vehicle capable of sustained air travel above treetop heights.

Certificate holder means a manufacturer (including importers) with a valid certificate of conformity for at least one engine family in a given calendar year.

Designated Officer means the Manager of the Engine Programs Group (6405-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-related defect means a defect in design, materials or workmanship (in an emission control device or vehicle component or system) that affects an emission-related component, parameter, or specification that is identified in Appendix I or Appendix II of this part.

Engine means an engine to which this part applies. For equipment subject to this part and regulated under equipment-based standards, the term engine in this part shall be interpreted to include equipment.

Engine-based means having emission standards related to measurements using an engine dynamometer, in units of grams of pollutant per kilowatt-hour.

Engine manufacturer means the manufacturer that is subject to the certification requirements of the standard-setting part. For vehicles/equipment subject to this part and regulated under vehicle/equipment-based standards, the term engine manufacturer in this part includes vehicles/equipment manufacturers.

Equipment-based means having emission standards related to measurements from an engine installed in a vehicle using a chassis dynamometer, in units of grams of pollutant per kilometer.

Equipment manufacturer means any company producing a piece of equipment (such as a vehicle) for sale or use in the United States.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine or vehicle for sale in the United States or otherwise introduces a new engine or vehicle into commerce in the United States. This includes importers that import new engines or new equipment into the United States for resale. It also includes secondary engine manufacturers.

New has the meaning we give it in the standard-setting part.

Nonroad engine means:

- (1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:
  - (i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or
  - (ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
  - (iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.
- (2) An internal combustion engine is not a nonroad engine if:
  - (i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or
  - (ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or
  - (iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph (2)(iii) does not apply to an engine after the engine is removed from the location.

Operating hours means:

- (1) For engine storage areas or facilities, times during which people other than custodians and security personnel are at work near, and can access, a storage area or facility.

- (2) For other areas or facilities, times during which an assembly line operates or any of the following activities occurs:
- (i) Testing, maintenance, or service accumulation.
  - (ii) Production or compilation of records.
  - (iii) Certification testing.
  - (iv) Translation of designs from the test stage to the production stage.
  - (v) Engine manufacture or assembly.

Piece of equipment means any vehicle, vessel, locomotive, aircraft, or other type of equipment using engines to which this part applies.

Placed into service means used for its intended purpose.

Reasonable technical basis means information that would lead a person familiar with engine design and function to reasonably believe a conclusion, related to compliance with the requirements of this part. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.

Standard-setting part means the part in the Code of Federal Regulations that defines emission standards for a particular engine (see §1068.1(a)). For example, the standard-setting part for non-recreational spark-ignition engines over 19 kW is part 1048 of this chapter.

Ultimate purchaser means the first person who in good faith buys a new engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

#### **§1068.35 What symbols, acronyms, and abbreviations does this part use?**

The following symbols, acronyms, and abbreviations apply to this part:

\$	U.S. dollars.
CFR	Code of Federal Regulations.
EPA	Environmental Protection Agency.
U.S.	United States.
U.S.C.	United States Code.

#### **§1068.40 Preemption of state standards and waiver procedures for nonroad engines and vehicles.**

- (a) The provisions of 40 CFR part 85, subpart Q, apply to all engines and vehicles that are subject to this part.
- (b) Section 209 of the Act does not preclude states from regulating the use and operation of nonroad engines, such as regulation on hours of usage, daily mass emission limits, or sulfur limits on fuel. It also does not preclude permits that regulate such operations once the engine is no longer new. States may not require retrofits of used nonroad engines, except that they may adopt and enforce retrofitting requirements identical to those adopted by California and authorized by EPA under section 209 of the Act.



## **Subpart B—Prohibited Actions and Related Requirements**

### **§1068.101 What general actions does this regulation prohibit?**

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation. The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2002. As described in paragraph (e) of this section, maximum penalty limits for later years are set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of new engines and manufacturers of equipment containing these engines, except as described in subparts C and D of this part:

(1) You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine or equipment after emission standards take effect for that engine or equipment, unless it has a valid certificate of conformity for its model year and the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions, unless the engine has a valid and appropriate certificate of conformity and the required engine label or tag. For purposes of this paragraph (a)(1), an appropriate certificate of conformity is one that applies for the same model year as the model year of the equipment (except as allowed by §1068.105(a)), covers the appropriate category of engines (such as locomotive or CI marine), and conforms to all requirements specified for equipment in the standard-setting part. This requirements of this paragraph (a)(1) also cover new engines you produce to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in §1068.240. We may assess a civil penalty up to \$31,500 for each engine in violation.

(2) This chapter requires you to record certain types of information to show that you meet our standards. You must comply with these requirements to make and maintain required records (including those described in §1068.501). You may not deny us access to or copying of your records if we have the authority to see or copy them. Also, you must give us the required reports or information without delay. Failure to comply with the requirements of this paragraph is prohibited. We may assess a civil penalty up to \$31,500 for each day in violation.

(3) You may not keep us from entering your facility to test engines or inspect if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited. We may assess a civil penalty up to \$31,500 for each day in violation.

(b) The following prohibitions apply to everyone with respect to the engines to which this part applies:

(1) You may not remove or disable a device or element of design that may affect an engine's emission levels. This restriction applies before and after the engine is placed in service. Section 1068.120 describes how this applies to rebuilding engines. For a manufacturer or dealer, we may assess a civil penalty up to \$31,500 for each engine in violation. For anyone else, we may assess a civil penalty up to \$3,150 for each engine in violation. This does not apply in any of the following situations:

- (i) You need to repair an engine and you restore it to proper functioning when the repair is complete.
- (ii) You need to modify an engine to respond to a temporary emergency and you restore it to proper functioning as soon as possible.
- (iii) You modify a new engine that another manufacturer has already certified to meet emission standards, intending to recertify it under your own engine family. In this case you must tell the original manufacturer not to include the modified engines in the original engine family.

(2) You may not knowingly manufacture, sell, offer to sell, or install, an engine part if one of its main effects is to bypass, impair, defeat, or disable the engine's control of emissions. We may assess a civil penalty up to \$3,150 for each part in violation.

(3) For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment, except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in §1068.30. We may assess a civil penalty up to \$31,500 for each day in violation.

(4) For an uncertified engine or piece of equipment that is excluded or exempted from any requirements of this chapter because it is to be used solely for competition, you may not use it in a manner that is inconsistent with use solely for competition. We may assess a civil penalty up to \$31,500 for each day in violation.

(5) You may not import an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part, and it would have been subject to standards had it been built in the United States. We may assess a civil penalty up to \$31,500 for each day in violation. Note the following:

(i) The definition of new is broad for imported engines; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Engines that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.

(6) You must meet your obligation to honor your emission-related warranty under §1068.115 and to fulfill any applicable responsibilities to recall engines under §1068.505. Failure to meet these obligations is prohibited.

We may assess a civil penalty up to \$31,500 for each engine in violation.

(c) Exemptions from these prohibitions are described in subparts C and D of this part.

(d) The standard-setting parts describe more requirements and prohibitions that apply to manufacturers (including importers) and others under this chapter.

(e) The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2002. Maximum penalty limits for later years may be adjusted based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based. The following table is shown here for informational purposes:

Table 1 of §1068.101—Legal Citation for Specific  
Prohibitions for Determining Maximum Penalty Amounts

Part 1068 Regulatory Citation of Prohibited Action	General Description of Prohibition	U.S. Code Citation for Clean Air Act Authority
§1068.101 (a) (1)	Introduction into commerce of an uncertified product.	42 U.S.C. 7522(a)(1)
§1068.101 (a)(2)	Failure to provide information.	42 U.S.C. 7522(a)(2)
§1068.101 (a)(3)	Denying access to facilities.	42 U.S.C. 7522(a)(2)
§1068.101 (b)(1)	Tampering with emission controls by a manufacturer or dealer.	42 U.S.C. 7522(a)(3)
	Tampering with emission controls by someone other than a manufacturer or dealer.	
§1068.101 (b)(2)	Sale or use of a defeat device.	42 U.S.C. 7522(a)(3)
§1068.101 (b)(3)	Mobile use of a stationary engine.	42 U.S.C. 7522(a)(1)
§1068.101 (b)(4)	Noncompetitive use of an uncertified engine that is exempted for competition.	42 U.S.C. 7522(a)(1)
§1068.101 (b) (5)	Importation of an uncertified product.	42 U.S.C. 7522(a)(1)

### **§1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?**

This section describes general provisions that apply to equipment manufacturers. See the standard-setting part for any requirements that apply for certain applications.

(a) Transitioning to new standards. You may use up your normal inventory of engines not certified to new emission standards if they were built before the date of the new standards. However, stockpiling these engines violates §1068.101(a)(1).

(b) Installing engines. You must follow the engine manufacturer's emission-related installation instructions. For example, you may need to constrain where you place an exhaust aftertreatment device or integrate into your equipment models a device for sending visual or audible signals to the operator. Not meeting the manufacturer's emission-related installation instructions is a violation of §1068.101(b)(1).

(c) Attaching a duplicate label. If you obscure the engine's label, you must do four things to avoid violating §1068.101(a)(1):

(1) Send a request for duplicate labels in writing with your company's letterhead to the engine manufacturer. Include the following information in your request:

- (i) Identify the type of equipment and the specific engine and equipment models needing duplicate labels.
- (ii) Identify the engine family (from the original engine label).
- (iii) State the reason that you need a duplicate label for each equipment model.
- (iii) Identify the number of duplicate labels you will need.

- (2) Permanently attach the duplicate label to your equipment by securing it to a part needed for normal operation and not normally requiring replacement. Make sure an average person can easily read it.
- (3) Destroy any unused duplicate labels if you find that you will not need them.
- (4) Keep the following records for at least eight years after the end of the model year identified on the engine label:

- (i) Keep a copy of your written request.
- (ii) Keep drawings or descriptions that show how you apply the duplicate labels to your equipment.
- (iii) Maintain a count of duplicate labels that you use or destroy.

(d) Producing nonroad equipment certified to highway emission standards. You may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:

- (1) The engine or vehicle is certified to 40 CFR part 86.
- (2) The engine is not adjusted outside the manufacturer's specifications.
- (3) The engine or vehicle is not modified in any way that may affect its emission control. This applies to evaporative emission controls, but not refueling emission controls.

#### **§1068.110 What other provisions apply to engines in service?**

(a) Aftermarket parts and service. As the engine manufacturer, you may not require anyone to use your parts or service to maintain or repair an engine, unless we approve this in your application for certification. It is a violation of the Act for anyone to manufacture an engine or vehicle part if one of its main effects is to reduce the effectiveness of the emission controls. See §1068.101(b)(2).

(b) Certifying aftermarket parts. As the manufacturer or rebuilder of an aftermarket engine part, you may—but are not required to—certify according to §85.2114 of this chapter that using the part will not cause engines to fail to meet emission standards. Whether you certify or not, however, you must keep any information showing how your parts or service affect emissions.

(c) Compliance with standards. We may test engines or equipment to investigate compliance with emission standards. We may also require the manufacturer to do this testing.

(d) Defeat devices. We may test engines or equipment to investigate potential defeat devices. We may also require the manufacturer to do this testing. If we choose to investigate one of your designs, we may require you to show us that it does not have a defeat device. To do this, you may have to share with us information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies. It is a violation of the Act for anyone to make, install or use defeat devices. See §1068.101(b)(2) and the standard-setting part.

(e) Warranty and maintenance. Owners may make warranty claims against the manufacturer for emission-related parts, as described in §1068.115. This generally includes any emission-related engine parts that were not in common use before we have adopted emission standards. In general, we consider replacement or repair of any other components to be the owner's responsibility. The warranty period begins when the engine is first placed into service. See the standard-setting part for specific requirements. It is a violation of the Act for anyone to disable emission controls. See §1068.101(b)(1) and the standard-setting part.

#### **§1068.115 When must manufacturers honor emission-related warranty claims?**

Section 207(a) of the Clean Air Act (42 U.S.C. 7541(a)) requires certifying manufacturers to warrant to purchasers that their engines are designed, built, and equipped to conform at the time of sale to the applicable regulations for their full useful life, including a warranty that the engines are free from defects in materials and workmanship that would cause an engine to fail to conform to the applicable regulations during the specified warranty period. This section codifies the

warranty requirements of section 207(a) without intending to limit these requirements.

(a) As a certifying manufacturer, you may deny warranty claims for failures that have been caused by the owner's or operator's improper maintenance or use. For example, you would not need to honor warranty claims for failures that have been directly caused by the operator's abuse of an engine or the operator's use of the engine in a manner for which it was not designed, and are not attributable to you in any way.

(b) As a certifying manufacturer, you may not deny emission-related warranty claims based on any of the following:

- (1) Maintenance or other service you or your authorized facilities performed.
- (2) Engine repair work that an operator performed to correct an unsafe, emergency condition attributable to you, as long as the operator tries to restore the engine to its proper configuration as soon as possible.
- (3) Any action or inaction by the operator unrelated to the warranty claim.
- (4) Maintenance that was performed more frequently than you specify.
- (5) Anything that is your fault or responsibility.
- (6) The use of any fuel that is commonly available where the engine operates, unless your written maintenance instructions state that this fuel would harm the engine's emission control system and operators can readily find the proper fuel.

#### **§1068.120 What requirements must I follow to rebuild engines?**

(a) This section describes the steps to take when rebuilding engines to avoid violating the tampering prohibition in §1068.101(b)(1). These requirements apply to anyone rebuilding an engine subject to this part, but the recordkeeping requirements in paragraphs (j) and (k) of this section apply only to businesses.

(b) The term “rebuilding” refers to a rebuild of an engine or engine system, including a major overhaul in which you replace the engine's pistons or power assemblies or make other changes that significantly increase the service life of the engine. It also includes replacing or rebuilding an engine's turbocharger or aftercooler or the engine's systems for fuel metering or electronic control so that it significantly increases the service life of the engine. For these provisions, rebuilding may or may not involve removing the engine from the equipment. Rebuilding does not normally include the following:

- (1) Scheduled emission-related maintenance that the standard-setting part allows during the useful life period (such as replacing fuel injectors).
- (2) Unscheduled maintenance that occurs commonly within the useful life period. For example, replacing a water pump is not rebuilding.

(c) For maintenance or service that is not rebuilding, you may not make changes that might increase emissions, but you do not need to keep any records.

(d) If you rebuild an engine or engine system, you must have a reasonable technical basis for knowing that the rebuilt engine has the same emissions performance as the engine in its certified configuration. Identify the model year of the resulting engine configuration. You have a reasonable basis if you meet two main conditions:

- (1) Install parts— new, used, or rebuilt— so a person familiar with engine design and function would reasonably believe that the engine with those parts will control emissions to the same degree as with the original parts. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.
- (2) Adjust parameters or change design elements only according to the original engine manufacturer's instructions. Or, if you differ from these instructions, you must have data or some other technical basis to show you should not expect in-use emissions to increase.

(e) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the

original configuration or another certified configuration of the same or later model year.

(f) If the rebuilt engine replaces another engine in a piece of equipment, you must rebuild it to a certified configuration that equals the emissions performance of the engine you are replacing.

(g) Do not erase or reset emission-related codes or signals from onboard monitoring systems without diagnosing and responding appropriately to any diagnostic codes. This requirement applies regardless of the manufacturer's reason for installing the monitoring system and regardless of its form or interface. Clear any codes from diagnostic systems when you return the rebuilt engine to service. Do not disable a diagnostic signal without addressing its cause.

(h) When you rebuild an engine, check, clean, adjust, repair, or replace all emission-related components (listed in Appendix I of this part) as needed according to the original manufacturer's recommended practice. In particular, replace oxygen sensors, replace the catalyst if there is evidence of malfunction, clean gaseous fuel system components, and replace fuel injectors (if applicable), unless you have a reasonable technical basis for believing they do not need replacement.

(i) If you are installing an engine that someone else has rebuilt, check all emission-related components listed in Appendix I of this part as needed according to the original manufacturer's recommended practice.

(j) Keep at least the following records:

(1) Identify the hours of operation (or mileage, as appropriate) at time of rebuild.

(2) Identify the work done on the engine or any emission-related control components, including a listing of parts and components you used.

(3) Describe any engine parameter adjustments.

(4) Identify any emission-related codes or signals you responded to and reset.

(k) You must show us or send us your records if we ask for them. Keep records for at least two years after rebuilding an engine. Keep them in any format that allows us to readily review them.

(1) You do not need to keep information that is not reasonably available through normal business practices. We do not expect you to have information that you cannot reasonably access.

(2) You do not need to keep records of what other companies do.

(3) You may keep records based on engine families rather than individual engines if that is the way you normally do business.

#### **§1068.125 What happens if I violate the regulations?**

(a) Civil penalties and injunctions. We may bring a civil action to assess and recover civil penalties and/or enjoin and restrain violations in the United States District Court for the district where you allegedly violated a requirement, or the district where you live or have your main place of business. Actions to assess civil penalties or restrain violations of §1068.101 must be brought by and in the name of the United States. The selected court has jurisdiction to restrain violations and assess civil penalties.

(1) To determine the amount of a civil penalty and reach a just conclusion, the court considers these main factors:

(i) The seriousness of your violation.

(ii) How much you benefitted or saved because of the violation.

(iii) The size of your business.

(iv) Your history of compliance with Title II of the Act.

(v) What you did to remedy the violation.

(vi) How the penalty will affect your ability to continue in business.

(vii) Such other matters as justice may require.

(2) Subpoenas for witnesses who must attend a district court in any district may apply to any other district.

(b) Administrative penalties. Instead of bringing a civil action, we may assess administrative penalties if the total is less than \$250,000 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that is appropriate for administrative penalty assessment, or if the limit is adjusted under 40 CFR part 19. No court may review such a determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22). The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section.

(1) To determine the amount of an administrative penalty, we will consider the factors described in paragraph (a)(1) of this section.

(2) An administrative order we issue under this paragraph (b) becomes final 30 days after we issue it, unless you ask for judicial review by that time (see paragraph (c) of this section). You may ask for review by any of the district courts listed in paragraph (a) of this section. Send the Administrator a copy of the filing by certified mail.

(3) We will not pursue an administrative action for a violation if either of the following two conditions is true:

(i) We are separately prosecuting the violation under this part.

(ii) We have issued a final order for a violation, no longer subject to judicial review, for which you have already paid a penalty.

(c) Judicial review. If you ask a court to review a civil or administrative penalty, we will file in the appropriate court within 30 days of your request a certified copy or certified index of the record on which the court or the Administrator issued the order.

(1) The judge may set aside or remand any order issued under this section only if one of the following is true:

(i) Substantial evidence does not exist in the record, taken as a whole, to support finding a violation.

(ii) The Administrator's assessment of the penalty is an abuse of discretion.

(2) The judge may not add civil penalties unless our penalty is an abuse of discretion that favors you.

(d) Effect of enforcement actions on other requirements. Our pursuit of civil or administrative penalties does not affect or limit our authority to enforce any provisions of this chapter.

(e) Penalties. In any proceedings, the United States government may seek to collect civil penalties assessed under this section.

(1) Once a penalty assessment is final, if you do not pay it, the Administrator will ask the Attorney General to bring a civil action in an appropriate district court to recover the money. We may collect interest from the date of the final order or final judgment at rates established by the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)). In this action to collect overdue penalties, the court will not review the validity, amount, and appropriateness of the penalty.

(2) In addition, if you do not pay the full amount of a penalty on time, you must then pay more to cover interest, enforcement expenses (including attorney's fees and costs for collection), and a quarterly nonpayment penalty for each quarter you do not pay. The nonpayment penalty is 10 percent of your total penalties plus any unpaid nonpayment penalties from previous quarters.

## **Subpart C— Exemptions and Exclusions**

### **§1068.201 Does EPA exempt or exclude any engines from the prohibited acts?**

We may exempt new engines from the prohibited acts in subpart B of this part under requirements described in this subpart. We may exempt an engine already placed in service in the United States from the prohibition in §1068.101(b)(1) if the exemption for engines used solely for competition applies (see §1068.235). In addition, see §1068.1 and the standard-setting parts to determine if other engines are excluded from some or all of the regulations in this chapter.

- (a) This subpart identifies which engines qualify for exemptions and what information we need. We may ask for more information.
- (b) If you violate any of the terms, conditions, instructions, or requirements to qualify for an exemption, we may void the exemption.
- (c) If you use an exemption under this subpart, we may require you to add a permanent label to your exempted engines. You may ask us to approve wording on the emission label different than we specify in this subpart if it is more appropriate for your engine.
- (d) If you produce engines we exempt under this subpart, we may require you to make and keep records, perform tests, make reports and provide information as needed to reasonably evaluate the validity of the exemption.
- (e) If you own or operate engines we exempt under this subpart, we may require you to provide information as needed to reasonably evaluate the validity of the exemption.
- (f) Subpart D of this part describes how we apply these exemptions to engines you import (or intend to import).
- (g) If you want to ask for an exemption or need more information, write to the Designated Officer.
- (h) You may ask us to modify the administrative requirements for the exemptions described in this subpart. We may approve your request if we determine that such approval is consistent with the intent of this part. For example, waivable administrative requirements might include some reporting requirements, but would not include any eligibility requirements or use restrictions.
- (i) If you want to take an action with respect to an exempted or excluded engine that is prohibited by the exemption or exclusion, such as selling it, you need to certify the engine. We will issue a certificate of conformity if you send us an application for certification showing that you meet all the applicable requirements from the standard-setting part. Also, in some cases, it may be sufficient to modify the engine as needed to make it identical to engines already covered by a certificate. Make sure these engines have emission control information labels that accurately describe their status.

### **§1068.210 What are the provisions for exempting test engines?**

- (a) We may exempt engines that are not exempted under other sections of this part that you will use for research, investigations, studies, demonstrations, or training. This may include engines placed into service if the primary purpose is to develop a fundamentally new emission-control technology related either to an alternative fuel or an aftertreatment device.
- (b) Anyone may ask for a testing exemption.
- (c) If you are a certificate holder, you may request an exemption for engines you intend to include in test programs over a two-year period.
  - (1) In your request, tell us the maximum number of engines involved and describe how you will make sure exempted engines are used only for this testing.
  - (2) Give us the information described in paragraph (d) of this section if we ask for it.



(d) If you are not a certificate holder do all of the following:

- (1) Show that the proposed test program has a valid purpose under paragraph (a) of this section.
- (2) Show you need an exemption to achieve the purpose of the test program (time constraints may be a basis for needing an exemption, but the cost of certification alone is not).
- (3) Estimate the duration of the proposed test program and the number of engines involved.
- (4) Allow us to monitor the testing.
- (5) Describe how you will ensure that you stay within this exemption's purposes. Address at least the following things:
  - (i) The technical nature of the test.
  - (ii) The test site.
  - (iii) The duration and accumulated engine operation associated with the test.
  - (iv) Ownership of the engines involved in the test.
  - (v) The intended final disposition of the engines.
  - (vi) How you will identify, record, and make available the engine identification numbers.
  - (vii) The means or procedure for recording test results.

(e) If we approve your request for a testing exemption, we will send you a letter or a memorandum for your signature describing the basis and scope of the exemption. The exemption does not take effect until we receive the signed letter or memorandum from you. It will also include any necessary terms and conditions, which normally require you to do the following:

- (1) Stay within the scope of the exemption.
- (2) Create and maintain adequate records that we may inspect.
- (3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:
  - (i) The label heading "EMISSION CONTROL INFORMATION".
  - (ii) Your corporate name and trademark.
  - (iii) Engine displacement, engine family identification (as applicable), and model year of the engine; or whom to contact for further information.
  - (iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.210 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
- (4) Tell us when the test program is finished.
- (5) Tell us the final disposition of the engines.
- (6) Send us a written confirmation that you meet the terms and conditions of this exemption.

**§1068.215 What are the provisions for exempting manufacturer-owned engines?**

- (a) You are eligible for the exemption for manufacturer-owned engines only if you are a certificate holder.
- (b) An engine may be exempt without a request if it is a nonconforming engine under your ownership and control and you operate it to develop products, assess production methods, or promote your engines in the marketplace. You may not lease, sell, or use the engine to generate revenue, either by itself or in a piece of equipment.
- (c) To use this exemption, you must do three things:
  - (1) Establish, maintain, and keep adequately organized and indexed information on each exempted engine, including the engine identification number, the use of the engine on exempt status, and the final disposition of any engine removed from exempt status.
  - (2) Let us access these records, as described in §1068.20.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

- (i) The label heading "EMISSION CONTROL INFORMATION".
- (ii) Your corporate name and trademark.
- (iii) Engine displacement, engine family identification (as applicable), and model year of the engine or whom to contact for further information.
- (iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

**§1068.220 What are the provisions for exempting display engines?**

- (a) Anyone may request an exemption for display engines.
- (b) A nonconforming display engine will be exempted if it is used only for displays in the interest of a business or the general public. This exemption does not apply to engines displayed for private use or any other purpose we determine is inappropriate for a display exemption.
- (c) You may operate the exempted engine, but only if we approve specific operation that is part of the display.
- (d) You may sell or lease the exempted engine only with our advance approval; you may not use it to generate revenue.
- (e) To use this exemption, you must add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:
  - (1) The label heading "EMISSION CONTROL INFORMATION".
  - (2) Your corporate name and trademark.
  - (3) Engine displacement, engine family identification (as applicable), and model year of the engine or whom to contact for further information.
  - (4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.220 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."
- (f) We may set other conditions for approval of this exemption.

**§1068.225 What are the provisions for exempting engines for national security?**

- (a) You are eligible for the exemption for national security only if you are a manufacturer.
- (b) Your engine is exempt without a request if you produce it for a piece of equipment owned or used by an agency of the federal government responsible for national defense, where the equipment has armor, permanently attached weaponry, or other substantial features typical of military combat.
- (c) You may request a national security exemption for engines not meeting the conditions of paragraph (b) of this section, as long as your request is endorsed by an agency of the federal government responsible for national defense. In your request, explain why you need the exemption.

**§1068.230 What are the provisions for exempting engines for export?**

- (a) If you export a new engine to a country with emission standards identical to ours, we will not exempt it. These engines must comply with our certification requirements.
- (b) If you export an engine to a country with different emission standards or no emission standards, it is exempt from the prohibited acts in this part without a request. If you produce an exempt engine for export and it is sold or offered for sale to someone in the United States (except for export), we will void the exemption.
- (c) Label each exempted engine and shipping container with a label or tag showing the engine is not certified for sale or

use in the United States. The label must include at least the statement “THIS ENGINE IS SOLELY FOR EXPORT AND IS THEREFORE IS EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS.”.

**§1068.235 What are the provisions for exempting engines used solely for competition?**

- (a) New engines you produce that are used solely for competition are generally excluded from emission standards. See the standard-setting parts for specific provisions where applicable.
- (b) If you modify an engine after it has been placed into service in the United States so it will be used solely for competition, it is exempt without request. This exemption applies only to the prohibition in §1068.101(b)(1) and is valid only as long as the engine is used solely for competition.
- (c) If you modify an engine under this exemption, you must destroy the original emission label. If you sell or give one of these engines to someone else, you must tell the new owner in writing that it may be used only for competition.

**§1068.240 What are the provisions for exempting new replacement engines?**

- (a) You are eligible for the exemption for new replacement engines only if you are a certificate holder.
- (b) The prohibitions in §1068.101(a)(1) do not apply to an engine if all the following conditions apply:
  - (1) You produce a new engine to replace an engine already placed in service in a piece of equipment.
  - (2) The engine being replaced was manufactured before the emission standards that would otherwise apply to the new engine took effect.
  - (3) No engine certified to current emission requirements is available with the appropriate physical or performance characteristics for the piece of equipment.
  - (4) You or your agent takes possession of the old engine.
  - (5) You make the replacement engine in a configuration identical in all material respects to the engine being replaced (or that of another certified engine of the same or later model year). This requirement applies only if the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine.
- (c) If the old engine was not certified to any emission standards under this chapter, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when standards began to apply to engines of that size and type] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

- (d) If the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH CURRENT FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earlier tier of emission standards began to apply to the old engine] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

**§1068.245 What temporary provisions address hardship due to unusual circumstances?**

(a) After considering the circumstances, we may permit you to introduce into commerce engines or equipment that do not comply with emission standards if all the following conditions apply:

- (1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from meeting requirements from this chapter.
- (2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.
- (3) Not having the exemption will jeopardize the solvency of your company.
- (4) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(b) To apply for an exemption, you must send the Designated Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption. For example, in the case of multiple tiers of emission standards, we may require that you meet the less stringent standards.

(f) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this section. This label must include at least the following items:

- (1) The label heading "EMISSION CONTROL INFORMATION".
- (2) Your corporate name and trademark.
- (3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.
- (4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

**§1068.250 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?**

(a) After considering the circumstances, we may extend the compliance deadline for you to meet new or revised emission standards, as long as you meet all the conditions and requirements in this section.

(b) To be eligible for this exemption, you must qualify under the standard-setting part for special provisions for small businesses or small-volume manufacturers.

(c) To apply for an extension, you must send the Designated Officer a written request. In your request, show that all the following conditions and requirements apply:

- (1) You have taken all possible business, technical, and economic steps to comply.
  - (i) In the case of importers of engines produced by other companies, show that you attempted to find a manufacturer capable of supplying complying products as soon as you became aware of the applicable requirements, but were unable to do so.
  - (ii) For all other manufacturers, show that the burden of compliance costs prevents you from meeting the requirements of this chapter.
- (2) Not having the exemption will jeopardize the solvency of your company.
- (3) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(d) In describing the steps you have taken to comply under paragraph (c)(1) of this section, include at least the following

information:

- (1) Describe your business plan, showing the range of projects active or under consideration.
  - (2) Describe your current and projected financial standing, with and without the burden of complying full with the applicable regulations in this chapter.
  - (3) Describe your efforts to raise capital to comply with regulations in this chapter (this may not apply for importers).
  - (4) Identify the engineering and technical steps you have taken or plan to take to comply with regulations in this chapter.
  - (5) Identify the level of compliance you can achieve. For example, you may be able to produce engines that meet a somewhat less stringent emission standard than the regulations in this chapter require.
- (e) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.
- (f) You must give us other relevant information if we ask for it.
- (g) An authorized representative of your company must sign the request and include the statement: "All the information in this request is true and accurate, to the best of my knowledge.".
- (h) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers. Otherwise, do not send your request more than three years before the relevant deadline.
- (i) We may include reasonable requirements on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit. For example, we may require that you meet a less stringent emission standard or buy and use available emission credits.
- (j) We will approve extensions of up to one year. We may review and revise an extension as reasonable under the circumstances.
- (k) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this section. This label must include at least the following items:
- (1) The label heading "EMISSION CONTROL INFORMATION".
  - (2) Your corporate name and trademark.
  - (3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.
  - (4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.250 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

#### **§1068.255 What are the provisions for exempting engines for hardship for equipment manufacturers and secondary engine manufacturers?**

This section describes how, in unusual circumstances, we may exempt certain engines to prevent a hardship to an equipment manufacturer or a secondary engine manufacturer. This section does not apply to products that are subject to vehicle-based emission standards.

- (a) Equipment exemption. As an equipment manufacturer, you may ask for approval to produce exempted equipment for up to 12 months. We will generally limit this to the first year that new or revised emission standards apply. Send the Designated Officer a written request for an exemption before you are in violation. In your request, you must show you are not at fault for the impending violation and that you would face serious economic hardship if we do not grant the exemption. This exemption is not available under this paragraph (a) if you manufacture the engine you need for your own equipment or if complying engines are available from other engine manufacturers that could be used in your equipment, unless we allow it elsewhere in this chapter. We may impose other conditions, including provisions to

recover the lost environmental benefit. In determining whether to grant the exemptions, we will consider all relevant factors, including the following:

- (1) The number of engines to be exempted.
- (2) The size of your company and your ability to endure the hardship.
- (3) The amount of time you had to redesign your equipment to accommodate a complying engine.
- (4) Whether there was any breach of contract by an engine supplier.
- (5) The potential for market disruption.

(b) Engine exemption. As an engine manufacturer, you may produce nonconforming engines for the equipment we exempt in paragraph (a) of this section. You do not have to request this exemption for your engines, but you must have written assurance from equipment manufacturers that they need a certain number of exempted engines under this section. Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine.

This label must include at least the following items:

- (1) The label heading "EMISSION CONTROL INFORMATION".
- (2) Your corporate name and trademark.
- (3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.
- (4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.255 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

(c) Secondary engine manufacturers. As a secondary engine manufacturer, you may ask for approval to produce exempted engines under this section for up to one year. We may require you to certify your engines to compliance levels above the emission standards that apply. For example, if you need an exemption from a second tier of standards, we may require you to meet the standards that applied to earlier model years.

(1) For the purpose of this section, a secondary engine manufacturer is a manufacturer that produces an engine by modifying an engine that is made by a different manufacturer for a different type of application. This includes, for example, automotive engines converted for use in industrial applications, or land-based engines converted for use in marine applications. This applies whether the secondary engine manufacturer is modifying a complete or partially complete engine and whether the engine was previously certified to emission standards or not. To be a secondary engine manufacturer, you must not be controlled by the manufacturer of the base engine (or by an entity that also controls the manufacturer of the base engine). In addition, equipment manufacturers that substantially modify engines become secondary engine manufacturers. For the purpose of this definition, "substantially modify" means changing an engine in a way that could change its emission characteristics.

(2) The provisions in paragraph (a) of this section that apply to equipment manufacturers requesting an exemption apply equally to you, except that you may manufacture the engines. Before we can approve the exemption under this section, you must commit to a plan to make up the lost environmental benefit.

(i) If you produce uncertified engines under this exemption, we will calculate the lost environmental benefit based on our best estimate of uncontrolled emission rates for your engines.

(ii) If you produce engines under this exemption that are certified to a compliance level less stringent than the emission standards that would otherwise apply, we will calculate the lost environmental benefit based on the compliance level you select for your engines.

(3) The labeling requirements in paragraph (b) of this section apply to your exempted engines; however, if you certify engines to specific compliance levels, state on the label the compliance levels that apply to each engine.

## **Subpart D—Imports**

### **§1068.301 Does this subpart apply to me?**

- (a) This subpart applies to you if you import into the United States engines or equipment subject to our emission standards or equipment containing engines subject to our emission standards.
- (b) In general, engines that you import must be covered by a certificate of conformity unless they were built before emission standards started to apply. This subpart describes the limited cases where we allow importation of exempt or excluded engines.
- (c) The U.S. Customs Service may prevent you from importing an engine if you do not meet the requirements of this subpart. In addition, U.S. Customs Service regulations may contain other requirements for engines imported into the United States (see 19 CFR Chapter I).

### **§1068.305 How do I get an exemption or exclusion for imported engines?**

- (a) Complete the appropriate EPA declaration form before importing any nonconforming engine. These forms are available on the Internet at <http://www.epa.gov/OMS/imports/> or by phone at 202-564-9660.
- (b) If we ask for it, prepare a written request in which you do the following:
  - (1) Give your name, address, telephone number, and taxpayer identification number.
  - (2) Give the engine owner's name, address, telephone number, and taxpayer identification number.
  - (3) Identify the make, model, identification number, and original production year of each engine.
  - (4) Identify which exemption or exclusion in this subpart allows you to import a nonconforming engine and describe how your engine qualifies.
  - (5) Tell us where you will keep your engines if you might need to store them until we approve your request.
  - (6) Authorize us to inspect or test your engines as the Act allows.
- (c) We may ask for more information.
- (d) You may import the nonconforming engines you identify in your request if you get prior written approval from us. The U.S. Customs Service may require you to show them the approval letter. We may temporarily or permanently approve the exemptions or exclusions, as described in this subpart.
- (e) Make sure the engine meets any labeling requirements that apply.

### **§1068.310 What are the exclusions for imported engines?**

Engines or equipment that are not subject to our emission standards are not subject to the restrictions on imports in §1068.301(b). If you show us that your engines qualify under one of the paragraphs of this section, we will approve your request to import such excluded engines. You must have our approval to import an engine under paragraph (a) of this section. You may, but are not required to request our approval to import the engines under paragraph (b) or (c) of this section. The following engines are excluded:

- (a) Engines used solely for competition. Engines you use solely for competition are generally excluded from the restrictions on imports in §1068.301(b), but only if they are properly labeled according to §1068.320. The standard-setting part may set special provisions for the manufacture, sale, or import of engines used solely for competition. Section 1068.101(b)(4) prohibits using these excluded engines for other purposes.
- (b) Stationary engines. The definition of nonroad engine in 40 CFR 1068.30 does not include certain engines used in stationary applications. Such engines are not subject to the restrictions on imports in §1068.301(b), but only if they are properly labeled according to §1068.320. Section 1068.101 restricts the use of stationary engines for non-stationary

purposes.

(c) Other engines. The standard-setting parts may exclude engines used in certain applications. For example, engines used in aircraft, underground mining, and hobby vehicles are generally excluded.

### **§1068.315 What are the permanent exemptions for imported engines?**

We may approve a permanent exemption from the restrictions on imports under §1039.301(b) under the following conditions:

- (a) National security exemption. You may import an engine under the national security exemption in §1068.225, but only if they are properly labeled according to §1068.320.
- (b) Manufacturer-owned engine exemption. You may import a manufacturer-owned engine, as described in §1068.215.
- (c) Replacement engine exemption. You may import a nonconforming replacement engine as described in §1068.240. To use this exemption, you must be a certificate holder for an engine family we regulate under the same part as the replacement engine.
- (d) Extraordinary circumstances exemption. You may import a nonconforming engine if we grant hardship relief as described in §1068.245.
- (e) Hardship exemption. You may import a nonconforming engine if we grant an exemption for the transition to new or revised emission standards, as described in §1068.255.
- (f) Identical configuration exemption. You may import a nonconforming engine if it is identical to certified engines produced by the same manufacturer, subject to the following provisions:

- (1) You may import only the following engines under this exemption:

- (i) Large nonroad spark-ignition engines (see part 1048 of this chapter).
  - (ii) Recreational nonroad spark-ignition engines and equipment (see part 1051 of this chapter).
  - (iii) Land-based nonroad diesel engines (see part 1039 of this chapter).

- (2) You must meet all the following criteria:

- (i) You have owned the engine for at least one year.
  - (ii) You agree not to sell, lease, donate, trade, or otherwise transfer ownership of the engine for at least five years, or until the engine is eligible for the exemption in paragraph (g) of this section. During this period, the only acceptable way to dispose of the engine is to destroy or export it.
  - (iii) You use data or evidence sufficient to show that the engine is in a configuration that is the same as an engine the original manufacturer has certified to meet emission standards that apply at the time the manufacturer finished assembling or modifying the engine in question. If you modify the engine to make it identical, you must follow the original manufacturer's complete written instructions.

- (3) We will tell you in writing if we find the information insufficient to show that the engine is eligible for this exemption. In this case, we will not consider your request further until you address our concerns.

(g) Ancient engine exemption. If you are not the original engine manufacturer, you may import a nonconforming engine that is subject to a standard-setting part and was first manufactured at least 21 years earlier, as long as it is still in its original configuration.

### **§1068.320 How must I label an imported engine with an exclusion or a permanent exemption?**

(a) For engines imported under §1068.310(a) or (b) or §1068.315 (a), you must place a permanent label or tag on each engine. If no specific label requirements from the standard-setting part or from subpart C of this part apply, you must meet the following requirements:

- (1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.



- (2) Make sure it is durable and readable for the engine's entire life.
  - (3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.
  - (4) Write it in block letters in English.
  - (5) Make it readily visible to the average person after the engine is installed in the equipment.
- (b) On the engine label or tag, do the following:
- (1) Include the heading "Emission Control Information".
  - (2) Include your full corporate name and trademark.
  - (3) State the engine displacement (in liters) and rated power. If the engine's rated power is not established, state the approximate power rating accurately enough to allow a determination of which standards would otherwise apply.
  - (4) State: "THIS ENGINE IS EXEMPT FROM THE REQUIREMENTS OF [identify the part referenced in 40 CFR 1068.1(a) that would otherwise apply], AS PROVIDED IN [identify the paragraph authorizing the exemption (for example, "40 CFR 1068.315(a)"]]. INSTALLING THIS ENGINE IN ANY DIFFERENT APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY."
- (c) Get us to approve alternate label language if it is more accurate for your engine.

#### **§1068.325 What are the temporary exemptions for imported engines?**

If we approve a temporary exemption from the restrictions on importing an engine under §1039.301(b), you may import it under the conditions in this section. We may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart. You may not sell or lease one of these engines while it is in the United States. You must eventually export the engine as we describe in this section unless you get a certificate of conformity for it or it qualifies for one of the permanent exemptions in §1068.315. Section 1068.330 specifies an additional temporary exemption allowing you to import certain engines you intend to sell or lease.

- (a) Exemption for repairs or alterations. You may temporarily import a nonconforming engine under bond solely to repair or alter it. You may operate the engine in the United States only to repair or alter it or to ship it to or from the service location. Export the engine directly after the engine servicing is complete.
- (b) Testing exemption. You may temporarily import a nonconforming engine under bond for testing if you follow the requirements of §1068.210. You may operate the engine in the United States only to allow testing. This exemption expires one year after you import the engine, unless we approve a one-time request for an extension of up to one more year. The engine must be exported before the exemption expires.
- (c) Display exemption. You may temporarily import a nonconforming engine under bond for display, as described in §1068.220. This exemption expires one year after you import the engine, unless we approve your request for an extension. We may approve an extension of up to one more year for each request, but no more than three years in total. The engine must be exported by the time the exemption expires or directly after the display concludes, whichever comes first.
- (d) Export exemption. You may temporarily import a nonconforming engine to export it, as described in §1068.230. You may operate the engine in the United States only as needed to prepare it for export. Label the engine as described in §1068.230.
- (e) Diplomatic or military exemption. You may temporarily import nonconforming engines without bond if you represent a foreign government in a diplomatic or military capacity. In your request to the Designated Officer (see §1068.305), include either written confirmation from the U.S. State Department that you qualify for this exemption or a copy of your orders for military duty in the United States. We will rely on the State Department or your military orders to determine when your diplomatic or military status expires, at which time you must export your exempt engines.

### **§1068.330 How do I import engines to modify for other applications?**

This section allows you to import engines in configurations different than their final configuration. This exemption is temporary, as described in paragraph (d) of this section.

(a) This section applies in the following cases:

- (1) You import a partially complete engine with the intent to manufacture complete engines for which you have either a certificate of conformity or an exemption that allows you to sell completed engines.
- (2) You import an uncertified complete engine with the intent to modify it for installation in an application different than its otherwise intended application (for example, you import a land-based engine to modify it for a marine application). In this case, to qualify for an exemption under this section, you need either a certificate of conformity or an exemption that allows you to sell completed engines.
- (3) You import a complete or partially complete engine to modify for an application for which emission standards do not apply.

(b) You may request this exemption in an application for certification. Otherwise, send your request to the Designated Officer. Your request must include:

- (1) The name of the supplier of the partially complete engine, or the original manufacturer of the complete engine.
- (2) A description of the certificate or exemption that will apply to the engines in the final configuration, or an explanation why a certificate or exemption is not needed.
- (3) A brief description of how and where final assembly will be completed.
- (4) An unconditional statement that the engines will comply with all applicable regulations in their final configuration.

(c) If we approve a temporary exemption for an engine, you may import it under the conditions in this section. We may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart.

(d) These provisions are intended only to allow you to import engines in the specific circumstances identified in this section, so any exemption under this section expires when you complete the assembly of the engine in its final configuration. If the engine in its final configuration is subject to emission standards, then it must be covered by a certificate or a different exemption before you introduce it into commerce.

### **§1068.335 What are the penalties for violations?**

(a) All imported engines. Unless you comply with the provisions of this subpart, importation of nonconforming engines is violation of sections 203 and 213(d) of the Act. You may then have to export the engines, or pay civil penalties, or both. The U.S. Customs Service may seize unlawfully imported engines.

(b) Temporarily imported engines. If you do not comply with the provisions of this subpart for a temporary exemption, you may forfeit the total amount of the bond in addition to the sanctions we identify in paragraph (a) of this section. We will consider an engine to be exported if it has been destroyed or delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. EPA or the U.S. Customs Service may offer you a grace period to allow you to export a temporarily exempted engine without penalty after the exemption expires.

### **§1068.340 What special provisions apply to Independent Commercial Importers?**

We generally consider engines to be new when they are imported into the United States, even if they have previously been used outside the country. See 40 CFR part 89, subpart G and 40 CFR 89.906(b) for special provisions allowing

Independent Commercial Importers to show that such engines meet the requirements of the standard-setting part without the full certification process.

## **Subpart E—Selective Enforcement Auditing**

### **§1068.401 What is a selective enforcement audit?**

- (a) We may conduct or require you to conduct emission tests on your production engines in a selective enforcement audit. This requirement is independent of any requirement for you to routinely test production-line engines.
- (b) If we send you a signed test order, you must follow its directions and the provisions of this subpart. We will tell you where to test the engines. This may be where you produce the engines or any other emission testing facility.
- (c) If we select one or more of your engine families for a selective enforcement audit, we will send the test order to the person who signed the application for certification or we will deliver it in person.
- (d) Within one working day of receiving the test order, notify the Designated Officer which test facility you have selected for emission testing.
- (e) You must do everything we require in the audit without delay.

### **§1068.405 What is in a test order?**

- (a) In the test order, we will specify the following things:
  - (1) The engine family and configuration (if any) we have identified for testing.
  - (2) The engine assembly plant, storage facility, or (if you import the engines) port facility from which you must select engines.
  - (3) The procedure for selecting engines for testing, including a selection rate.
  - (4) The test procedures, duty cycles, and test points, as appropriate, for testing the engines to show that they meet emission standards.
- (b) We may state that we will select the test engines.
- (c) We may identify alternate engine families or configurations for testing in case we determine the intended engines are not available for testing or if you do not produce enough engines to meet the minimum rate for selecting test engines.
- (d) We may include other directions or information in the test order.
- (e) We may ask you to show us that you meet any additional requirements that apply to your engines (closed crankcases, for example).
- (f) In anticipation of a potential audit, you may give us a list of your preferred engine families and the corresponding assembly plants, storage facilities, or (if you import the engines) port facilities from which we should select engines for testing. The information would apply only for a single model year, so it would be best to include this information in your application for certification. If you give us this list before we issue a test order, we will consider your recommendations, but we may select engines differently.
- (g) If you also do routine production-line testing with the selected engine family in the same time period, the test order will tell you what changes you might need to make in your production-line testing schedule.

### **§1068.410 How must I select and prepare my engines?**

- (a) Selecting engines. Select engines as described in the test order. If you are unable to select test engines this way, you may ask us to approve an alternate plan, as long as you make the request before you start selecting engines.
- (b) Assembling engines. Produce and assemble test engines using your normal production and assembly process for that engine family.
  - (1) Notify us directly if you make any change in your production, assembly, or quality control processes that might affect emissions between the time you receive the test order and the time you finish selecting test engines.

- (2) If you do not fully assemble engines at the specified location, we will describe in the test order how to select components to finish assembling the engines. Assemble these components onto the test engines using your documented assembly and quality control procedures.
- (c) Modifying engines. Once an engine is selected for testing, you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:
- (1) You document the need for doing so in your procedures for assembling and inspecting all your production engines and make the action routine for all the engines in the engine family.
  - (2) This subpart otherwise allows your action.
  - (3) We approve your action in advance.
- (d) Engine malfunction. If an engine malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.
- (e) Setting adjustable parameters. Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.
- (1) We may adjust idle speed outside the physically adjustable range as needed until the engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.
  - (2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines.
- (f) Stabilizing emission levels. Before you test production-line engines, you may operate the engine to stabilize the emission levels. Using good engineering judgment, operate your engines in a way that represents the way production engines will be used. You may operate each engine for no more than the greater of two periods:
- (1) 50 hours.
  - (2) The number of hours you operated your emission-data engine for certifying the engine family (see 40 CFR part 1065, subpart E).
- (g) Damage during shipment. If shipping an engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the engine. Report to us, in your written report under §1068.450, all adjustments or repairs you make on test engines before each test.
- (h) Shipping engines. If you need to ship engines to another facility for testing, make sure the test engines arrive at the test facility within 24 hours after being selected. You may ask that we allow more time if you are unable to do this.
- (i) Retesting after invalid tests. You may retest an engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

#### **§1068.415 How do I test my engines?**

- (a) Use the test procedures specified in the standard-setting part for showing that your engines meet emission standards. The test order will give further testing instructions.
- (b) If no test cells are available at a given facility, you may make alternate testing arrangements with our approval.
- (c) Test at least two engines in each 24-hour period (including void tests). However, if your projected U.S. nonroad engine sales within the engine family are less than 7,500 for the year, you may test a minimum of one engine per 24-hour period. If you request and justify it, we may approve a lower testing rate.
- (d) Accumulate service on test engines at a minimum rate of 6 hours per engine during each 24-hour period. The first

24-hour period for service accumulation begins when you finish preparing an engine for testing. The minimum service accumulation rate does not apply on weekends or holidays. You may ask us to approve a lower service accumulation rate. Plan your service accumulation to allow testing at the rate specified in §1068.415. Select engine operation for accumulating operating hours on your test engines to represent normal in-use engine operation for the engine family.

(e) Test engines in the same order you select them.

#### **§1068.420 How do I know when my engine family fails an SEA?**

(a) A failed engine is one whose final deteriorated test results exceed an applicable emission standard for any regulated pollutant.

(b) Continue testing engines until you reach a pass decision for all pollutants or a fail decision for one pollutant.

(c) You reach a pass decision for the SEA requirements when the number of failed engines is less than or equal to the pass decision number in Appendix A to this subpart for the total number of engines tested. You reach a fail decision for the SEA requirements when the number of failed engines is greater than or equal to the fail decision number in Appendix A to this subpart for the total number of engines you test. An acceptable quality level of 40 percent is the basis for the pass or fail decision.

(d) Consider test results in the same order as the engine testing sequence.

(e) If you reach a pass decision for one pollutant, but need to continue testing for another pollutant, we will disregard these later test results for the pollutant with the pass decision.

(f) Appendix A to this subpart lists multiple sampling plans. Use the sampling plan for the projected sales volume you reported in your application for the audited engine family.

(g) We may choose to stop testing after any number of tests.

(h) If we test some of your engines in addition to your own testing, we may decide not to include your results as official data for those engines if there is substantial disagreement between your testing and our testing. We will reinstate your data as valid if you show us that we made an error and your data are correct.

(i) If we rely on our test data instead of yours, we will notify you in writing of our decision and the reasons we believe your facility is not appropriate for doing the tests we require under this subpart. You may request in writing that we consider your test results from the same facility for future testing if you show us that you have made changes to resolve the problem.

#### **§1068.425 What happens if one of my production-line engines exceeds the emission standards?**

(a) If one of your production-line engines fails to meet one or more emission standards (see §1068.420), the certificate of conformity is automatically suspended for that engine. You must take the following actions before your certificate of conformity can cover that engine:

(1) Correct the problem and retest the engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each engine (see §1068.450).

(b) You may at any time ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part).

#### **§1068.430 What happens if an engine family fails an SEA?**

(a) We may suspend your certificate of conformity for an engine family if it fails the SEA under §1068.420. The suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

- (b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family fails the SEA. The suspension is effective when you receive our notice.
- (c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

**§1068.435 May I sell engines from an engine family with a suspended certificate of conformity?**

You may sell engines that you produce after we suspend the engine family's certificate of conformity only if one of the following occurs:

- (a) You test each engine you produce and show it complies with emission standards that apply.
- (b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected engines and remedy any noncompliance at no expense to the owner if later testing shows that engines in the engine family still do not comply.

**§1068.440 How do I ask EPA to reinstate my suspended certificate?**

- (a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for the SEA failure, propose a remedy, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.
- (b) Give us data from production-line testing showing that engines in the remedied engine family comply with all the emission standards that apply.

**§1068.445 When may EPA revoke my certificate under this subpart and how may I sell these engines again?**

- (a) We may revoke your certificate for an engine family in the following cases:
  - (1) You do not meet the reporting requirements.
  - (2) Your engine family fails an SEA and your proposed remedy to address a suspended certificate is inadequate to solve the problem or requires you to change the engine's design or emission-control system.
- (b) To sell engines from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the applicable requirements.
  - (1) If we determine your proposed design change may not control emissions for the engine's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.
  - (2) Unless we require more testing, you may show compliance by testing production-line engines as described in this subpart.
  - (3) We will issue a new or updated certificate of conformity when you have met these requirements.

**§1068.450 What records must I send to EPA?**

- (a) Within 30 calendar days of the end of each audit, send us a report with the following information:
  - (1) Describe any facility used to test production-line engines and state its location.
  - (2) State the total U.S.-directed production volume and number of tests for each engine family.
  - (3) Describe your test engines, including the engine family's identification and the engine's model year, build date, model number, identification number, and number of hours of operation before testing for each test engine.
  - (4) Identify where you accumulated hours of operation on the engines and describe the procedure and schedule

you used.

(5) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission figures for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(6) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of equipment.

(7) Report on each failed engine as described in §1068.425.

(b) We may ask you to add information to your written report, so we can determine whether your new engines conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

We submit this report under Sections 208 and 213 of the Clean Air Act. Our testing conformed completely with the requirements of 40 CFR part 1068. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production engines. All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send reports of your testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. We will release information about your sales or production volumes, which is all we will consider confidential.

#### **§1068.455 What records must I keep?**

(a) We may review your records at any time, so it is important to keep required information readily available. Organize and maintain your records as described in this section.

(b) Keep paper records for testing under this subpart for one full year after you complete all the testing required for the selective enforcement audit. For additional storage, you may use any format or media.

(c) Keep a copy of the written reports described in §1068.450.

(d) Keep the following additional records:

(1) The names of supervisors involved in each test.

(2) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test engine and the names of all supervisors who oversee this work.

(3) If you shipped the engine for testing, the date you shipped it, the associated storage or port facility, and the date the engine arrived at the testing facility.

(4) Any records related to your audit that are not in the written report.

(5) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(e) If we ask, you must give us projected or actual production for an engine family. Include each assembly plant if you produce engines at more than one plant.

(f) We may ask you to keep or send other information necessary to implement this subpart.



## Appendix A to Subpart E of Part 1068—Plans for Selective Enforcement Auditing

The following tables describe sampling plans for selective enforcement audits, as described in §1068.420:

Table A-1.—Sampling Plan Code Letter

Projected Engine Family Sales	Code letter <sup>1</sup>	Minimum Number of Tests		Maximum Number of Tests
		To Pass	To Fail	
20 - 50	AA	3	5	20
20 - 99	A	4	6	30
100 - 299	B	5	6	40
300 - 499	C	5	6	50
500 +	D	5	6	60

<sup>1</sup> A manufacturer may optionally use either the sampling plan for code letter "AA" or sampling plan for code letter "A" for Selective Enforcement Audits of engine families with annual sales between 20 and 50 engines. Additionally, the manufacturer may switch between these plans during the audit.

Table A-2—Sampling Plans for Different Engine Family Sales Volumes

Stage <sup>a</sup>	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
1										
2										
3	0									
4	0		0							
5	1	5	0		0		0		0	
6	1	6	1	6	1	6	0	6	0	6
7	2	6	1	7	1	7	1	7	1	7
8	2	7	2	7	2	7	2	7	2	8
9	3	7	2	8	2	8	2	8	2	8
10	3	8	3	8	3	8	3	9	3	9
11	4	8	3	8	3	9	3	9	3	9
12	4	9	4	9	4	9	4	10	4	10
13	5	9	5	10	4	10	4	10	4	10
14	5	10	5	10	5	10	5	11	5	11
15	6	10	6	11	5	11	5	11	5	11
16	6	10	6	11	6	12	6	12	6	12
17	7	10	7	12	6	12	6	12	6	12
18	8	10	7	12	7	13	7	13	7	13
19	8	10	8	13	8	13	7	13	7	13
20	9	10	8	13	8	14	8	14	8	14
21			9	14	9	14	8	14	8	14
22			10	14	9	15	9	15	9	15

Stage <sup>a</sup>	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
23			10	15	10	15	10	15	9	15
24			11	15	10	16	10	16	10	16
25			11	16	11	16	11	16	11	16
26			12	16	11	17	11	17	11	17
27			12	17	12	17	12	17	12	17
28			13	17	12	18	12	18	12	18
29			14	17	13	18	13	18	13	19
30			16	17	13	19	13	19	13	19
31					14	19	14	19	14	20
32					14	20	14	20	14	20
33					15	20	15	20	15	21
34					16	21	15	21	15	21
35					16	21	16	21	16	22
36					17	22	16	22	16	22
37					17	22	17	22	17	23
38					18	22	18	23	17	23
39					18	22	18	23	18	24
40					21	22	19	24	18	24
41							19	24	19	25
42							20	25	19	26
43							20	25	20	26
44							21	26	21	27
45							21	27	21	27
46							22	27	22	28
47							22	27	22	28
48							23	27	23	29
49							23	27	23	29
50							26	27	24	30
51									24	30
52									25	31
53									25	31
54									26	32
55									26	32
56									27	33
57									27	33
58									28	33
59									28	33
60									32	33

<sup>a</sup>Stage refers to the cumulative number of engines tested.

## Subpart F—Reporting Defects and Recalling Engines

### §1068.501 How do I report engine defects?

(a) General provisions. As an engine manufacturer, you must investigate in certain circumstances whether emission-related components are defective and send us reports as specified by this section.

(1) The term emission-related component includes those components listed in Appendix I of this part. For the purposes of this section, complete engines shall also be considered an emissions-related component. It also includes factory settings of emission-related parameters and specifications listed in Appendix II of this part.

(2) For the purposes of this section, defects do not include damage to emission-related components (or maladjustment of parameters) caused by owners improperly maintaining or abusing their engine.

(3) You must track the information specified in paragraph (b)(1) of this section. You are not required to collect additional information other than that specified in paragraph (b)(1) of this section before reaching the threshold for an investigation specified in paragraph (e) of this section.

(4) You may ask us to allow you to use alternate methods for tracking, investigating, reporting, and correcting emission-related defects. In your request, explain and demonstrate why you believe your alternate system will be at least as effective in tracking, identifying, investigating, evaluating, reporting, and correcting potential and actual emissions-related defects as the requirements in this section.

(5) If we determine that emission-related defects result in a substantial number of properly maintained and used engines not conforming to the regulations of this chapter during their useful life, we may order you to conduct a recall of your engines (see §1068.505).

(6) Send the defect reports and status reports required by this section to the Designated Officer.

(7) This section distinguishes between defects and possible defect. A possible defect occurs anytime there is an indication that an emission-related component might have a defect, as described in paragraph (b)(1) of this section.

(b) Investigation of possible defects. If the number of engines that have a possible defect, as defined by paragraph (b)(1) of this section, exceed the thresholds specified in paragraph (e) of this section, you must conduct an investigation to determine if an emission-related component is actually defective.

(1) You must track warranty claims, parts shipments, and the other information specified in paragraph (b)(1)(iii) of this section. You must classify an engine component as having a possible defect if any of the following is true:

(i) A warranty claim is submitted for the component, whether this is under your emission-related warranty or any other warranty.

(ii) You ship a replacement component other than for normally scheduled maintenance during the useful life of the engine.

(iii) You receive any other information indicating the component may be defective, such as information from dealers or hot line complaints.

(2) Your investigation must be prompt, thorough, consider all relevant information, follow scientific and engineering principles, and be designed to obtain all the information specified in paragraph (d) of this section.

(3) Your investigation only needs to consider possible defects that occur within the useful life period, or within five years after the end of the model year, whichever is longer.

(4) You must continue your investigation until you are able to show that components are not defective or you obtain all the information specified for a defect report in paragraph (d) of this section. Send us an updated

defect report anytime you have significant additional information.

(5) If a component with a possible defect is used in additional engine families or model years, you must investigate whether the component or part may be defective when used in these additional engine families or model years, and include these results in any defect report you send under paragraph (c) of this section.

(6) If your initial investigation concludes that the number of engines with a defect is fewer than the thresholds specified in paragraph (f) of this section, but other information later becomes available that may show that the number of engines with a defect exceeds these thresholds, then you must resume your investigation. If you resume an investigation, you must include the information from the earlier investigation to determine whether to send a defect report.

(c) Reporting defects. You must send us a defect report in either of the following cases:

(1) Your investigation shows that the number of engines with a defect exceeds the thresholds specified in paragraph (f) of this section. Send the defect report within 15 days after the date you identify this number of defective engines. See paragraph (h) of this section for reporting requirements that apply if the number of engines with a defect does not exceed the thresholds in paragraph (f) of this section.

(2) You know a defective emission-related component exists in a number of engines that exceeds the thresholds specified in paragraph (f) of this section, regardless of how you obtain this information. Send the defect report within 15 days after you learn that the number of defects exceeds one of these thresholds.

(d) Contents of a defect report. Include the following information in a defect report:

(1) Your corporate name and a person to contact regarding this defect.

(2) A description of the defect, including a summary of any engineering analyses and associated data, if available.

(3) A description of the engines that may have the defect, including engine families, models, and range of production dates. Note that you must address all model years for the engines, not just the model year for which you triggered the reporting requirement.

(4) An estimate of the number and percentage of each class or category of affected engines that have or may have the defect, and an explanation of how you determined this number.

(5) An estimate of the defect's impact on emissions, with an explanation of how you calculated this estimate and a summary of any emission data demonstrating the impact of the defect, if available.

(6) A description of your plan for addressing the defect or an explanation of your reasons for not believing the defects must be remedied.

(e) Thresholds for conducting a defect investigation. Unless the standard-setting part specifies otherwise, you must begin a defect investigation based on the following threshold values:

(1) For engine with rated power under 560 kW:

(i) When the component is a catalytic converter (or other aftertreatment device), for one of the following number of engines that may have the defect:

(A) For engine families with annual sales below 4,000 units: 20 or more engines.

(B) For engine families with annual sales between 4,000 and 100,000 units: more than 2 percent of the total number of engines in the engine family.

(C) For engine families with annual sales above 100,000 units: 2,000 or more engines.

(ii) When the emission-related component is anything but a catalytic converter (or other aftertreatment device), for one of the following number of engines that may have the defect:

(A) For engine families with annual sales below 4,000 units: 40 or more engines.

(B) For engine families with annual sales between 4,000 and 100,000 units: more than 4

percent of the total number of engines in the engine family.

(C) For engine families with annual sales above 100,000 units: 4,000 or more engines.

(2) For engine with rated power greater than or equal to 560 kW, if the number of engines in an engine family that may have the defect exceeds 1 percent of the total number of engines in the engine family or 5 engines, whichever is greater.

(f) Thresholds for filing a defect report. You must send a defect report based on the following threshold values:

(1) For engine with rated power under 560 kW:

(i) When the component is a catalytic converter (or other aftertreatment device), for one of the following number of engines that may have the defect:

(A) For engine families with annual sales below 4,000 units: 5 or more engines.

(B) For engine families with annual sales between 4,000 and 100,000 units: more than 0.125 percent of the total number of engines in the engine family.

(C) For engine families with annual sales above 100,000 units: 125 or more engines.

(ii) When the emission-related component is anything but a catalytic converter (or other aftertreatment device), for one of the following number of engines that may have the defect:

(A) For engine families with annual sales below 4,000 units: 10 or more engines.

(B) For engine families with annual sales between 4,000 and 100,000 units: more than 0.250 percent of the total number of engines in the engine family.

(C) For engine families with annual sales above 100,000 units: 250 or more engines.

(2) For engine with rated power greater than or equal to 560 kW, if the number of engines in an engine family that has the defect exceeds 0.5 percent of the total number of engines in the engine family or 2 engines, whichever is greater.

(g) How to count defects. In most cases, you may track defects separately for each model year and engine family. For families with annual U.S.-directed production volumes under 5,000 engines, you may apply the percentage thresholds in paragraphs (e) and (f) of this section on the basis of multiple model years, for engines using the same emission-related components. To determine whether you exceed the investigation threshold in paragraph (e) of this section, count defects that you correct before they reach the ultimate purchaser. Do not count these corrected defects to determine whether you exceed the reporting threshold in paragraph (f) of this section.

(h) Investigation reports. If you investigate possible defects under paragraph (b) of this section and find that the number of engines with a defect does not exceed the thresholds specified in paragraph (f) of this section, you must send us a report supporting this conclusion. Include the information specified in paragraph (d) of this section, or explain why the information is not relevant. Send this report within 15 days after the date you reach this conclusion.

(i) Future production. If you identify a design or manufacturing defect that prevents engines from meeting the requirements of this part, you must correct the defect as soon as possible for any future production for engines in every family affected by the defect. This applies without regard to whether you are required to conduct a defect investigation or submit a defect report under this section.

#### **§1068.505 How does the recall program work?**

(a) If we make a determination that a substantial number of properly maintained and used engines do not conform to the regulations of this chapter during their useful life, you must submit a plan to remedy the nonconformity of your engines. We will notify you of our determination in writing. Our notice will identify the class or category of engines affected and describe how we reached our conclusion. If this happens, you must meet the requirements and follow the instructions in this subpart. You must remedy at your expense noncompliant engines that have been properly maintained and used.

You may not transfer this expense to a dealer or equipment manufacturer through a franchise or other agreement.

(b) You may ask for a hearing if you disagree with our determination (see subpart G of this part).

(c) Unless we withdraw the determination of noncompliance, you must respond to it by sending a remedial plan to the Designated Officer by the later of these two deadlines:

(1) Within 60 days after we notify you.

(2) Within 60 days after a hearing.

(d) Once you have sold an engine to the ultimate purchaser, we may inspect or test the engine only if he or she permits it, or if state or local inspection programs separately provide for it.

(e) You may ask us to allow you to conduct your recall differently than specified in this subpart, consistent with section 207(c) of the Act.

#### **§1068.510 How do I prepare and apply my remedial plan?**

(a) In your remedial plan, describe all of the following:

(1) The class or category of engines to be recalled, including the number of engines involved and the model year or other information needed to identify the engines.

(2) The modifications, alterations, repairs, corrections, adjustments, or other changes you will make to correct the affected engines.

(3) A brief description of the studies, tests, and data that support the effectiveness of the remedy you propose to use.

(4) The instructions you will send to those who will repair the engines under the remedial plan.

(5) How you will determine the owners' names and addresses.

(6) How you will notify owners; include copies of any notification letters.

(7) The proper maintenance or use you will specify, if any, as a condition to be eligible for repair under the remedial plan. Describe how owners should show they meet your conditions.

(8) The steps owners must take for you to do the repair. You may set a date or a range of dates, specify the amount of time you need, and designate certain facilities to do the repairs.

(9) Which company (or group) you will assign to do or manage the repairs.

(10) If your employees or authorized warranty agents will not be doing the work, state who will and say they can do it.

(11) How you will ensure an adequate and timely supply of parts.

(12) The effect of proposed changes on fuel consumption, driveability, and safety of the engines you will recall; include a brief summary of the information supporting these conclusions.

(13) How you intend to label the engines you repair and where you will place the label on the engine (see §1068.515).

(b) We may require you to add information to your remedial plan.

(c) We may require you to test the proposed repair to show it will remedy the noncompliance.

(d) Use all reasonable means to locate owners. We may require you to use government or commercial registration lists to get owners' names and addresses, so your notice will be effective.

(e) The maintenance or use that you specify as a condition for eligibility under the remedial plan may include only things you can show would cause noncompliance. Do not require use of a component or service identified by brand, trade, or corporate name, unless we approved this approach with your original certificate of conformity. Also, do not place conditions on who maintained the engine.

(f) We may require you to adjust your repair plan if we determine owners would be without their engines or equipment

for an unreasonably long time.

(g) We will tell you in writing within 15 days of receiving your remedial plan whether we have approved or disapproved it. We will explain our reasons for any disapproval.

(h) Begin notifying owners within 15 days after we approve your remedial plan. If we hold a hearing, but do not change our position about the noncompliance, you must begin notifying owners within 60 days after we complete the hearing, unless we specify otherwise.

#### **§1068.515 How do I mark or label repaired engines?**

(a) Attach a label to each engine you repair under the remedial plan. At your discretion, you may label or mark engines you inspect but do not repair.

(b) Make the label from a durable material suitable for its planned location. Make sure no one can remove the label without destroying or defacing it.

(c) On the label, designate the specific recall campaign and state where you repaired or inspected the engine.

(d) We may waive or modify the labeling requirements if we determine they are overly burdensome.

#### **§1068.520 How do I notify affected owners?**

(a) Notify owners by first class mail, unless we say otherwise. We may require you to use certified mail. Include the following in your notice:

(1) State: “The U.S. Environmental Protection Agency has determined that your engine may be emitting pollutants in excess of the Federal emission standards, as defined in Title 40 of the Code of Federal Regulations. These emission standards were established to protect the public health or welfare from air pollution.”.

(2) State that you (or someone you designate) will repair these engines at your expense.

(3) If we approved maintenance and use conditions in your remedial plan, state that you will make these repairs only if owners show their engines meet the conditions for proper maintenance and use. Describe these conditions and how owners should prove their engines are eligible for repair.

(4) Describe the components your repair will affect and say generally how you will repair the engines.

(5) State that the engine, if not repaired, may fail an emission inspection test if state or local law requires one.

(6) Describe any adverse effects on its performance or driveability that would be caused by not repairing the engine

(7) Describe any adverse effects on the functions of other engine components that would be caused by not repairing the engine.

(8) Specify the date you will start the repairs, the amount of time you will need to do them, and where you will do them. Include any other information owners may need to know.

(9) Include a self-addressed card that owners can mail back if they have sold the engine (or equipment in which the engine is installed); include a space for owners to write the name and address of a buyer.

(10) State that owners should call you at a phone number you give to report any difficulty in obtaining repairs.

(11) State: “To ensure your full protection under the emission warranty on your engine by federal law, and your right to participate in future recalls, we recommend you have your engine serviced as soon as possible. We may consider your not servicing it to be improper maintenance.”.

(b) We may require you to add information to your notice or to send more notices.

(c) You may not in any communication with owners or dealers say or imply that your noncompliance does not exist or that it will not degrade air quality.

**§1068.525 What records must I send to EPA?**

(a) Send us a copy of all communications related to the remedial plan you sent to dealers and others doing the repairs. Mail or e-mail us the information at the same time you send it to others.

(b) From the time you begin to notify owners, send us a report within 25 days of the end of each calendar quarter. Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first. In these reports, identify the following:

- (1) The range of dates you needed to notify owners.
- (2) The total number of notices sent.
- (3) The number of engines you estimate fall under the remedial plan (explain how you determined this number).
- (4) The cumulative number of engines you inspected under the remedial plan.
- (5) The cumulative number of these engines you found needed the specified repair.
- (6) The cumulative number of these engines you have repaired.
- (7) The cumulative number of engines you determined to be unavailable due to exportation, theft, retirement, or other reasons (specify).
- (8) The cumulative number of engines you disqualified for not being properly maintained or used.

(c) If your estimated number of engines falling under the remedial plan changes, change the estimate in your next report and add an explanation for the change.

(d) We may ask for more information.

(e) We may waive reporting requirements or adjust the reporting schedule.

(f) If anyone asks to see the information in your reports, we will follow the provisions of §1068.10 for handling confidential information.

**§1068.530 What records must I keep?**

We may review your records at any time, so it is important that you keep required information readily available. Keep records associated with your recall campaign for three years after you complete your remedial plan. Organize and maintain your records as described in this section.

(a) Keep a paper copy of the written reports described in §1068.525.

(b) Keep a record of the names and addresses of owners you notified. For each engine, state whether you did any of the following:

- (1) Inspected the engine.
- (2) Disqualified the engine for not being properly maintained or used.
- (3) Completed the prescribed repairs.

(c) You may keep the records in paragraph (b) of this section in any form we can inspect, including computer databases.

**§1068.535 How can I do a voluntary recall for emission-related problems?**

If we have made a determination that a substantial number of properly maintained and used engines do not conform to the regulations of this chapter during their useful life, you may not use a voluntary recall or other alternate means to meet your obligation to remedy the noncompliance. Thus, this section only applies where you learn that your engine family does not meet the requirements of this chapter and we have not made such a determination.

(a) To do a voluntary recall under this section, first send the Designated Officer a plan, following the guidelines in



§1068.510. Within 15 days, we will send you our comments on your plan.

(b) Once we approve your plan, start notifying owners and carrying out the specified repairs.

(c) From the time you start the recall campaign, send us a report within 25 days of the end of each calendar quarter, following the guidelines in §1068.525(b). Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first.

(d) Keep your reports and the supporting information as described in §1068.530.

**§1068.540 What terms do I need to know for this subpart?**

The following terms apply to this subpart:

Days means calendar days.

Owner means someone who owns an engine affected by a remedial plan or someone who owns a piece of equipment that has one of these engines.

## **Subpart G—Hearings**

### **§1068.601 What are the procedures for hearings?**

If we agree to hold a hearing related to our decision to order a recall under §1068.505, we will hold the hearing according to the provisions of 40 CFR 85.1807. For any other issues, you may request an informal hearing, as described in 40 CFR 86.1853-01.

## **Appendix I to Part 1068—Emission-Related Components**

This appendix specifies emission-related components that we refer to for describing such things as emission-related defects or requirements related to rebuilding engines.

- I. Emission-related components include any engine parts related to the following systems:
  - 1. Air-induction system.
  - 2. Fuel system.
  - 3. Ignition system.
  - 4. Exhaust gas recirculation systems.
- II. The following parts are also considered emission-related components:
  - 1. Aftertreatment devices.
  - 2. Crankcase ventilation valves.
  - 3. Sensors.
  - 4. Electronic control units.
- III. Emission-related components also include any other part whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance.
- IV. We also consider the emission-control information label to be an emission-related component.

## **Appendix II to Part 1068—Emission-Related Parameters and Specifications**

This appendix specifies emission-related parameters and specifications that we refer to for describing such things as emission-related defects or requirements related to rebuilding engines.

- I. Basic Engine Parameters -- Reciprocating Engines.
  - 1. Compression ratio.
  - 2. Type of air aspiration (natural, Roots-blown, supercharged, turbocharged).
  - 3. Valves (intake and exhaust).
    - a. Head diameter dimension.
    - b. Valve lifter or actuator type and valve lash dimension.
  - 4. Camshaft timing.
    - a. Valve opening - intake exhaust (degrees from top-dead center or bottom-dead center).
    - b. Valve closing - intake exhaust (degrees from top-dead center or bottom-dead center).
    - c. Valve overlap (degrees).
  - 5. Ports -- two stroke engines (intake and/or exhaust).
    - a. Flow area.
    - ii. Opening timing (degrees from top-dead center or bottom-dead center).
    - iii. Closing timing (degrees from top-dead center or bottom-dead center).
- II. Intake Air System.
  - 1. Roots blower/supercharger/turbocharger calibration.
  - 2. Charge air cooling.
    - a. Type (air-to-air; air-to-liquid).
    - b. Type of liquid cooling (engine coolant, dedicated cooling system).
    - c. Performance.
  - 3. Temperature control system calibration.

4. Maximum allowable inlet air restriction.

### III. Fuel System.

1. General.
  - a. Engine idle speed.
  - b. Engine idle mixture.
2. Carburetion.
  - a. Air-fuel flow calibration.
  - b. Idle mixture.
  - c. Transient enrichment system calibration.
  - d. Starting enrichment system calibration.
  - e. Altitude compensation system calibration.
  - f. Hot idle compensation system calibration.
3. Fuel injection for spark-ignition engines.
  - a. Control parameters and calibrations.
  - b. Idle mixture.
  - c. Fuel shutoff system calibration.
  - d. Starting enrichment system calibration.
  - e. Transient enrichment system calibration.
  - f. Air-fuel flow calibration.
  - g. Altitude compensation system calibration.
  - h. Operating pressure(s).
  - i. Injector timing calibration.
4. Fuel injection for compression-ignition engines.
  - a. Control parameters and calibrations.
  - b. Transient enrichment system calibration.
  - c. Air-fuel flow calibration.
  - d. Altitude compensation system calibration.
  - e. Operating pressure(s).
  - f. Injector timing calibration.

### IV. Ignition System for Spark-ignition Engines.

1. Control parameters and calibration.
2. Initial timing setting.
3. Dwell setting.
4. Altitude compensation system calibration.
5. Spark plug voltage.

### V. Engine Cooling System—thermostat calibration.

### VI. Exhaust System—maximum allowable back pressure.

### VII. System for Controlling Exhaust Emissions.

1. Air injection system.
  - a. Control parameters and calibrations.
  - b. Pump flow rate.
2. EGR system.
  - a. Control parameters and calibrations.
  - b. EGR valve flow calibration.
3. Catalytic converter system.
  - a. Active surface area.
  - b. Volume of catalyst.
  - c. Conversion efficiency.
4. Backpressure.

VIII. System for Controlling Crankcase Emissions.

1. Control parameters and calibrations.
2. Valve calibrations.

IX. Auxiliary Emission Control Devices (AECD).

1. Control parameters and calibrations.
2. Component calibration(s).

X. System for Controlling Evaporative Emissions.

1. Control parameters and calibrations.
2. Fuel tank.
  - a. Volume.
  - b. Pressure and vacuum relief settings.

XI. Warning Systems Related to Emission Controls.

1. Control parameters and calibrations.
2. Component calibrations.